

1500 SW Arrowhead Road
Topeka, KS 66604-4027



Phone: 785-271-3100
Fax: 785-271-3354
<http://kcc.ks.gov/>

Pat Apple, Chairman
Shari Feist Albrecht, Commissioner
Jay Scott Emler, Commissioner

Sam Brownback, Governor

NOTICE OF PENALTY ASSESSMENT

June 6, 2017

17-TRAM-521-PEN

Jay Unruh, Secretary of Treasurer
Superior Erosion Control Inc.
PO Box 397
Hesston, Kansas 67062

Certified Mail Receipt No. 70161970000105740600

This is a notice of a penalty assessment against Superior Erosion Control Inc. for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on April 19, 2017, by Kansas Corporation Commission Special Investigator(s) Doug Handy. For a full description of the penalty and terms and obligations, please refer to the Penalty Order that is attached to this notice.

IF YOU ACCEPT THE PENALTY:

Superior Erosion Control has been assessed an \$850 penalty. You have thirty (30) days from the date of service of this Penalty Order to pay the fine, unless you choose the reduced penalty option explained below. Please remit payment of \$850, through your personal account with the Kansas Corporation Commission's KTRAN application located at <https://puc.kcc.ks.gov/ktran/>. If you have not received a letter from the Transportation Division assigning you a PIN, please contact that Division at 785-271-3145. You must have an account through KTRAN to pay the penalty owed.

SUPERIOR EROSION CONTROL IS A NEW ENTRANT MOTOR CARRIER AND IS ELIGIBLE FOR A PENALTY REDUCTION OF FIFTY PERCENT (50%) UNDER THE FOLLOWING TERMS:

New Entrant motor carriers are eligible for a one-time, fifty-percent (50%) reduction in the penalty(s) normally assessed motor carriers in accordance with the FY 2017 Uniform Penalty Assessment Matrix. You have to meet the terms and obligations set out in the attached Reduced Penalty Agreement to be eligible for the fifty-percent (50%) reduction. A fifty-percent (50%) reduction in the penalty assessed in the attached Order is available if:

(1) the carrier signs and submits within fifteen (15) days from the date of this Penalty Order, the attached Reduced Penalty Agreement to Litigation Counsel at the above address;

(2) within 30 days from the date of the attached Penalty Order, the carrier submits to Transportation Staff an approved Corrective Action Plan (CAP) documenting the violation(s) described in the attached Order, including specific and detailed information explaining the carrier's efforts and concrete steps taken to ensure the violation(s) do not occur in the future; and

(3) within thirty (30) days from the date of the attached Penalty Order, the carrier sends an individual responsible for safety compliance to attend a Commission-sponsored safety seminar, and proof of attendance must be submitted to the undersigned Litigation Counsel shortly thereafter.

(4) within 18 months from the date of the attached Penalty Order, the carrier must be available for a follow-up Safety Compliance Review. Transportation Staff will contact the carrier to schedule the review.

If a carrier is approved for the fifty-percent (50%) reduced penalty, a Motion to Amend Penalty Order, along with the Reduced Penalty Agreement will be filed with the Commission. An Amended

Penalty Order assessing the reduced penalty and setting out the terms and conditions stated above will be issued by the Commission shortly thereafter. Payment of the reduced penalty of \$425 would be due within thirty (30) days from the date of service of the Amended Penalty Order.

IF YOU CONTEST THE PENALTY ORDER:

You have the right to request a hearing if you contest the terms of the Penalty Order. A request for hearing must be made in writing, setting forth the specific grounds upon which relief is sought. Superior Erosion Control Inc. must file within fifteen (15) days from the date of service of this Order, the request for hearing with the Commission's electronic filing system found at <https://puc.kcc.ks.gov/e-filing/e-express/>, and by mailing a copy of the request for hearing to Litigation Counsel at the above address. If you do not have access to the internet, you can mail an original and seven (7) copies of the request to the Commission's Secretary at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, within fifteen (15) days from the date of service of this Penalty Order and mail a copy of the request to Litigation Counsel. K.A.R. 82-1-215; K.S.A. 2016 Supp. 77-542.

IF YOU FAIL TO ACT:

Failure to adhere to the terms and obligations set out in the attached Penalty Order, including payment of the penalty of \$850 within thirty (30) days from the date of service of this Penalty Order, or in the alternative, provide a written request for a hearing within fifteen (15) days from the date of service of this Penalty Order, will result in the Order becoming a final Penalty Order and the terms and conditions set out therein will be enforced. If Superior Erosion Control submits the attached Reduced Penalty Agreement as explained above, an Amended Penalty order may be issued assessing the reduced penalty of \$425 and that payment will become due within thirty (30) days from the date of service of the Amended Penalty Order.

Respectfully,



Ahsan A. Latif
Litigation Counsel
(785) 271-3118
a.latif@kcc.ks.gov

1500 SW Arrowhead Road
Topeka, KS 66604-4027



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Fax: 785-271-3354
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Pat Apple, Chairman
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REDUCED PENALTY AGREEMENT

17-TRAM-521-PEN

Superior Erosion Control Inc. hereby submits this Reduced Penalty Agreement to become eligible for a fifty percent (50%) reduction in the penalty assessed in the Penalty Order dated June 6, 2017. Superior Erosion Control has agreed to comply with the following terms and obligations:

1. Superior Erosion Control has submitted, within fifteen (15) days from the date of the Penalty Order issued on June 6, 2017, this Reduced Penalty Agreement to Litigation Counsel at the above address.
2. Superior Erosion Control will, within 30 days from the date of the Penalty Order dated June 6, 2017, submit to Transportation Staff an approved Corrective Action Plan (CAP) documenting the violation(s) describing specific and detailed information explaining the carrier's efforts and concrete steps taken to ensure the violation(s) do not occur in the future.
3. Superior Erosion Control will, within thirty (30) days from the date of the Penalty Order dated June 6, 2017, send an individual responsible for safety compliance to attend a Commission-sponsored safety seminar, and proof of attendance will be submitted to the Litigation Counsel.
4. Superior Erosion Control will be available within eighteen (18) months from the date of the Penalty Order for a Safety Compliance Review. Transportation Staff will contact it to schedule the review.

Superior Erosion Control Inc. understands that if approved, Transportation Litigation Counsel will file a Motion for Amended Penalty Order with the Agreement attached to the motion. The Amended Penalty Order will assess Superior Erosion Control a fifty-percent (50%) reduced penalty of \$425, and set out the terms and conditions stated above. Once the Amended Penalty Order is issued by the Commission, Superior Erosion Control will have thirty (30) days from the date of service of the Amended Order to pay the reduced penalty assessed.

Dated this ____ day of _____, 2017.

Superior Erosion Control Inc.

Jay Unruh
Secretary of Treasurer

(This Agreement can be mailed via U.S. Mail to the address above to the attention of Ahsan Latif, Litigation Counsel, or sent via e-mail to v.jacobsen@kcc.ks.gov and alatif@kcc.ks.gov.)

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Pat Apple, Chairman
 Shari Feist Albrecht
 Jay Scott Emler

In the Matter of the Investigation of **Superior**)
Erosion Control Inc., of Hesston, Kansas,)
Regarding the Violation of the Motor Carrier)
Safety Statutes, Rules and Regulations and the) Docket No. 17-TRAM-521-PEN
Commission's Authority to Impose Penalties,)
Sanctions and/or the Revocation of Motor)
Carrier Authority.)

PENALTY ORDER

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). The Commission, having been briefed on the issue by the Director of the Commission's Transportation Division, finds and concludes as follows:

I. JURISDICTION

1. Pursuant to K.S.A. 2016 Supp. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.S.A. 2016 Supp. 66-1,108, doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.

2. Pursuant to K.S.A. 2016 Supp. 66-1,129a, 66-1,130 and 66-1,142b, the Commission may suspend operations, revoke or amend certificates, and initiate sanctions or fines against every motor carrier and every person who violates any provision of Kansas law in regard to the regulation of such motor carriers and persons, or who fails to obey any order, decision or regulation of the Commission.

3. The Commission has the authority, pursuant to K.A.R. 82-1-237, to investigate an entity under the Commission's jurisdiction and order a hearing on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

II. BACKGROUND

4. Superior Erosion Control Inc. (Superior Erosion Control) obtained private operating authority from the Commission on June 4, 2015, and operates under KSMCID number 170905 and USDOT number 1983722.

5. Jay Unruh attended a Commission-sponsored Motor Carrier Education and Instructional Meeting on April 27, 2015, on behalf of Superior Erosion Control.

6. Superior Erosion Control is a private motor carrier which primarily hauls motor vehicles, grain, feed, hay, and lawn equipment.

7. Superior Erosion Control is a New Entrant motor carrier and is eligible for a fifty-percent (50%) reduction of the penalty(s) normally assessed motor carriers in accordance with the FY 2017 Uniform Penalty Assessment Matrix.

III. STATEMENT OF FACTS

8. Pursuant to the jurisdiction and authority cited above, on April 19, 2017, Commission Staff (Staff) Special Investigator(s) Doug Handy conducted a compliance review of the operations of Superior Erosion Control. A copy of the safety compliance review is attached hereto as Attachment "A" and is hereby incorporated by reference. As a result of this investigation, Mr. Handy identified three (3) violation(s) of the Motor Carrier Safety Regulations.

- a. On October 28, 2016, Superior Erosion Control required or permitted its driver, Marshall Holderman, to operate a CDL-required commercial motor vehicle, a 2015 Ford, VIN ending in 32767, GVWR 14,000 lbs., pulling a 2015 PJ trailer, VIN ending in 1220045, GVWR 25,000 lbs., in intrastate commerce from Halstead, Kansas to Medicine Lodge, Kansas. This trip is evidenced by Driver/Vehicle Examination Report No. KSHP05200177, dated October 28, 2016, a copy of which is attached hereto as Attachment “B” and is hereby incorporated by reference. At the time of this transportation, Superior Erosion Control had not implemented an alcohol and controlled substance testing program for its CDL drivers. The carrier’s failure to establish an alcohol and controlled substances testing program for its CDL drivers that complies with the procedures established in 49 C.F.R. 382.105 as adopted by K.A.R. 82-4-3c is a violation of 49 C.F.R. 382.115(a), adopted by K.A.R. 82-4-3c, and authorized by K.S.A. 2016 Supp. 66-1,129. Staff recommends a fine of \$650.
- b. On March 17, 2017, Superior Erosion Control required or permitted its driver, James Litchfield, to operate a CDL-required commercial motor vehicle, a 2010 Ford, VIN ending in 28208, GVWR 16,000 lbs., pulling a 2007 Circle trailer, VIN ending in 634116, GVWR 25,500 lbs., in intrastate commerce from Moundridge, Kansas to Potwin, Kansas. This trip is evidenced by the driver’s Time Record, dated March 27, 2017, a copy of which is attached hereto as Attachment “C” and is hereby incorporated by reference. At the time of this transportation, Superior

Erosion Control failed to obtain its driver's motor vehicle record (MVR) within 30 days of employment. The driver was employed on September 7, 2016 and the MVR was not obtained by the carrier until April 11, 2017. Superior Erosion Control's failure to obtain MVRs on its drivers within 30 days of employment and maintain the MVRs in the driver qualification files pursuant to 49 C.F.R. 391.51 is a violation of 49 C.F.R. 391.23(a)(1) and (b), adopted by K.A.R. 82-4-3g, and authorized by K.S.A. 2015 Supp. 66-1,129. Staff recommends a fine of \$100.

- c. During the transportation described in paragraph a., above, Superior Erosion Control failed to make an inquiry every 12 months into the annual motor vehicle record (MVR) of its driver and maintain the response(s) of each state agency in the driver qualification file. The driver was hired on July 8, 2011, and the driver qualification file had only one inquiry dated April 11, 2017. Superior Erosion Control's failure to inquire into its driver's MVR at least once every 12 months and maintain a copy of the MVR in the driver qualification file is a violation of 49 C.F.R. Part 391.25(a) and (c)(1), adopted by K.A.R. 82-4-3g, and authorized by K.S.A. 2016 Supp. 66-1,112. Staff recommends a fine of \$100.

IV. STAFF'S RECOMMENDATIONS

9. Based upon the available facts, Staff recommends the Commission find Superior Erosion Control committed three (3) violation(s) of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as

adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

10. Staff recommends a civil penalty of \$850 for three (3) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

11. Staff provides notice to the Commission that Superior Erosion Control Inc. is a New Entrant motor carrier and is eligible for a fifty-percent (50%) reduced civil penalty if it submits the Reduced Penalty Agreement, which is attached to the Notice of Penalty Assessment, and the Agreement is approved.

12. Staff recommends Superior Erosion Control Inc. submit a Corrective Action Plan (CAP) within 30 days of the date of this Penalty Order, to Transportation Staff, documenting the violation(s) described in the this Penalty Order, including specific and detailed information explaining the carrier's efforts and concrete steps taken to ensure the violation(s) do not occur in the future. The CAP must be approved by Transportation Staff to qualify for the fifty-percent (50%) discount.

13. Staff further recommends that Superior Erosion Control attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order, and provide proof of attendance to the Litigation Counsel.

14. Finally, Staff recommends that Superior Erosion Control submit to one follow-up safety compliance review within eighteen (18) months from the date of this Order. Staff will contact the motor carrier at a later date to determine an appropriate time for this review.

V. CONCLUSIONS OF LAW

15. The Commission finds it has jurisdiction over Superior Erosion Control because it is a motor carrier as defined in K.S.A. 2016 Supp. 66-1,108.

16. The Commission finds a penalty of \$850 should be assessed Superior Erosion Control for committing three (3) violation(s) of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

17. The Commission finds Superior Erosion Control is a New Entrant motor carrier and is eligible for a fifty-percent (50%) reduction in the penalty(s) normally assessed motor carriers in accordance with the FY 2017 Uniform Penalty Assessment Matrix. The carrier must submit to Litigation Counsel, within fifteen (15) days from the date of this Penalty Order, the signed and dated Reduced Penalty Agreement attached, which states it will comply with the reduced penalty terms and obligations set out therein.

THE COMMISSION THEREFORE ORDERS THAT:

A. Superior Erosion Control Inc., of Hesston, Kansas is hereby assessed a penalty of \$850 for three (3) violation(s) of Kansas law governing the regulation of motor carriers, the Kansas Administrative Regulations and provisions of the Federal Motor Carrier Safety Regulations, as adopted by the Kansas Administrative Regulations. Payment of \$850 must be made through your personal account with the Kansas Corporation Commission's KTRAN application located at <https://puc.kcc.ks.gov/ktran/>. If you have not received a letter from the Transportation Division assigning you a PIN, please contact that Division at 785-271-3145. You must have an account through KTRAN to pay the penalty owed.

B. Superior Erosion Control is ordered to attend a Commission-sponsored safety meeting within ninety (90) days from the date of this Order, and provide proof of attendance to

Litigation Counsel. A schedule of dates and locations for the safety seminar can be found at the Commission's website http://www.kcc.state.ks.us/trans/safety_meetings.htm.

C. Superior Erosion Control must submit a Corrective Action Plan (CAP) within thirty (30) days of the date of this Penalty Order, to Transportation Staff, documenting the violation(s) described in the attached Order, including specific and detailed information explaining the carrier's efforts and concrete steps taken to ensure the violation(s) do not occur in the future.

D. Superior Erosion Control is ordered to submit to one follow-up safety compliance review within eighteen (18) months from the date of this Order. Transportation Staff will contact the motor carrier at a later date to determine an appropriate time for this review.

E. If Superior Erosion Control does not submit the Reduced Penalty Agreement and fails to pay the full penalty(s) of \$850 within thirty (30) days from the date of service of this Penalty Order, *see* K.S.A. 66-1,105, and/or fails to comply with the provisions of this Order, the Commission will have the right to order further sanctions, including suspension of Superior Erosion Control's motor carrier operating authority without further notice. Additionally, the Commission may issue and enforce revocation of motor carrier authority and/or issue cease and desist order(s), and may order other remedies available to the Commission by law, without further notice.

F. **Pursuant to K.S.A. 2016 Supp. 77-537 and K.S.A. 77-542, any party may request a hearing on the above issue(s) by submitting a written request setting forth the specific grounds upon which relief is sought, within fifteen (15) days from the date of service of this Penalty Order. The request may be electronically filed with the Commission's electronic filing system at <https://puc.kcc.ks.gov/e-filing/e-express/>, and a**

copy mailed to the Litigation Counsel within fifteen (15) days from the date of service of this Order. If you do not have access to the internet, you can mail an original seven (7) copies of the request to the Commission's Secretary, at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and mail a copy to Litigation Counsel within fifteen (15) days from the date of service of this Order. On June 6, 2017, this Order was mailed via Certified Mail, Return Receipt Requested, Receipt Number 70161970000105740600. Service of this Order is deemed complete upon the date delivered shown on the Domestic Return Receipt. A hearing will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of Superior Erosion Control's right to a hearing.

G. Attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. For civil penalties exceeding \$500, a corporation shall appear before the Commission by its attorney, unless waived by the Commission for good cause shown and a determination that such waiver is in the public interest. K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2); K.A.R. 82-1-202(a). For civil penalties of \$500 or less, a corporation may appear by a duly authorized representative of the corporation. K.S.A. 2016 Supp. 66-1,142b(e) and amendments thereto.

H. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders, as necessary.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: JUN 06 2017



Lynn M. Retz
Secretary to the Commission


AAL

Order Mailed Date

JUN 07 2017

ATTACHMENT "A"

Kansas Corporation Commission

	US DOT # 1983722	Legal: SUPERIOR EROSION CONTROL INC Operating (DBA):					
MC/MX #:		State #:	Federal Tax ID: (EIN)				
Review Type: Compliance Review (CR)							
Scope: Principal Office		Location of Review/Audit: Other		Territory: F			
Operation Types Interstate Intrastate							
Carrier: N/A HM Shipper: N/A N/A Cargo Tank: N/A		Business: Corporation Gross Revenue: for year ending: 12/31/2016					
Company Physical Address: <div style="background-color: black; height: 30px; width: 100%;"></div>							
Contact Name: Jay Unruh Phone numbers: (1) E-Mail Address:							
Company Mailing Address: P O BOX 397 HESSTON, KS 67062-0397							
Carrier Classification Private Property							
Cargo Classification Motor Vehicles Grain, Feed, Hay Other: Lawn Equipment							
Hazardous Materials 9 Miscellaneous HM Carried Non-Bulk							
Equipment							
	Owned Term Leased Trip Leased			Owned Term Leased Trip Leased			
Truck	2	0	0	Trailer	4	0	0
Power units used in the U.S.: 2 Percentage of time used in the U.S.: 100							
Does carrier transport placardable quantities of HM? No Is an HM Permit required? N/A							
Driver Information							
	Inter	Intra	Average trip leased drivers/month: 0				
< 100 Miles:			Total Drivers: 2				
>= 100 Miles:	1	1	CDL Drivers: 2				





SUPERIOR EROSION CONTROL INC
U S DOT # 1983722

State #: [REDACTED]

Review Date:
04/19/2017

Part A

QUESTIONS regarding this report or the Federal Motor Carrier Safety or
Hazardous Materials rules may be addressed to the Office of Motor Carriers at

1500 SW. Arrowhead Rd
Topeka, Ks 66604-4027

This report will be used to assess your safety compliance.

Person(s) Interviewed

Name: [REDACTED]

Name: Jay Unruh

Title: Secretary of Treasurer





SUPERIOR EROSION CONTROL INC

U.S. DOT #: 1983722

State #: [REDACTED]

Review Date:

04/19/2017

Part B Violations

1 FEDERAL	Primary: 382.115(a)	Discovered 1	Checked 1	Drivers/Vehicles In Violation Checked
Description Failing to implement an alcohol and/or controlled substances testing program on the date the employer begins commercial motor vehicle operations. Example Driver Name [REDACTED] Trip Date 10/28/2016 Ks Roadside Inspection #KSHP052000177 2015 Ford VIN # [REDACTED] 32767 GVWR 14,000/2015 PJ VIN # [REDACTED] 1220045 GVWR 25,000 GCWR 39,000. Carrier failed to implement an alcohol controlled substance testing program prior to beginning there operation on June 2015. Carrier records indicated carrier join ProMed Physician Services, P.A. in Wichita Ks. 67203 on 04/06/2017.				
2 FEDERAL	Primary: 391.21(a)	Discovered 1	Checked 2	Drivers/Vehicles In Violation Checked 1 2
Description Using a driver who has not completed and furnished an employment application meeting minimum requirements. Example Driver Name [REDACTED] Trip Date 03/16/2017 Hire Date 09/07/2016 The carrier employment application failed to have the some of the required information on the application per the regulations. The applications were missing date of birth, social security number, list of traffic violations for convictions the previous 3 years. list of accidents, and nature of experience in the operation of motor vehicles.				
3 STATE	Primary: 391.23(a)(1) CFR Equivalent: 391.23(a)	Discovered 1	Checked 2	Drivers/Vehicles In Violation Checked 1 2
Description Carrier failed to make an inquiry to each State where the driver held or holds a motor vehicle license or permit during the preceding 3 years to obtain that driver's motor vehicle record. Example Driver Name [REDACTED] Trip Date 03/17/2017 Hire Date 09/07/2016 Driver operated a 2010 Ford VIN# [REDACTED] 26208 GVWR 16,000/ 2007 Circle Trlr. VIN # [REDACTED] 534116 GVWR 25,500 in Intrastate commerce from Moundridge, Ks. to a location near Potwin, Ks.				
4 STATE	Primary: 391.23(c) CFR Equivalent: 391.23(c)	Discovered 1	Checked 2	Drivers/Vehicles In Violation Checked 1 2
Description Failing to investigate driver's background within 30 days of employment. Example Driver Name [REDACTED] Trip Date 03/16/2017 Hire Date 09/07/2016 Carrier fail to conduct previous employment verification on the driver as required by the regulations. There was no documentation provided during this investigation from the carrier				





SUPERIOR EROSION CONTROL INC
U.S. DOT #: 1963722

State #

Review Date

04/19/2017

Part B Violations

5 STATE	Primary: 391.25(a) CFR Equivalent: 391.25(a)	Discovered 1	Checked 2	Drivers/Vehicles In Violation 1 Checked 2
Description Failing to make an inquiry into the driving record of each driver to the appropriate State agencies in which the driver held a commercial motor vehicle operator's license at least once every 12 months Example Driver Name [REDACTED] Trip Date 10/28/2016 Hire Date 07/08/2011 Ks. Roadside Inspection #KSHP052000177 The driver qualification files had MVR that was obtained on 04/11/2017. No other records were obtained for 2015-2016 as required by the regulations.				
6 STATE	Primary: 391.51(b)(5) CFR Equivalent: 391.51(b)(5)	Discovered 1	Checked 2	Drivers/Vehicles In Violation 1 Checked 2
Description Failing to maintain a note relating to the annual review of the driver's driving record as required by 391.25(c)(2) Example Driver Name [REDACTED] Trip Date 10/28/2016 Hire Date 07/08/2011 Ks. Roadside Inspection #KSHP052000177 The driver qualification files had no annual reviews for 2015-2017 as required by the regulations.				
7 STATE	Primary: 391.51(b)(6) CFR Equivalent: 391.51(b)(6)	Discovered 1	Checked 2	Drivers/Vehicles In Violation 1 Checked 2
Description Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27 Example Driver Name [REDACTED] Trip Date 10/28/2016 Hire Date 07/08/2011 Ks. Roadside Inspection #KSHP052000177 The driver qualification files had no certifications in violations for 2015-2017 as required by the regulations.				
8 STATE	Primary: 391.51(d) CFR Equivalent: 391.51(d)	Discovered 1	Checked 2	Drivers/Vehicles In Violation 1 Checked 2
Description Failing to keep required records in driver's qualification file for 3 years after date of execution Example Driver Name [REDACTED] Trip Date 10/28/2016 Hire Date 07/08/2011 Ks. Roadside Inspection #KSHP052000177 Carrier failed to retain previous medical certificates for each driver in the driver qualification file [REDACTED] medically certified on 04/18/2016 [REDACTED] medically certified on 03/28/2017				





SUPERIOR EROSION CONTROL INC
U.S DOT #. 1983722

State #: [REDACTED]

Review Date
04/19/2017

Part B Violations

Safety Fitness Rating Information:

Total Miles Operated 25,000
Recordable Accidents 0

OOS Vehicle (CR): 0

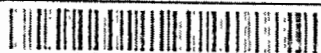
Number of Vehicle Inspected (CR): 0

OOS Vehicle (MCMIS): 0

Number of Vehicles Inspected (MCMIS): 0

Your proposed safety rating is :

This Review is not Rated.





SUPERIOR EROSION CONTROL INC
U.S DOT # 1983722

State #: [REDACTED]

Review Date:
04/19/2017

Part B Requirements and/or Recommendations

1. Copies of the regulations, forms, interpretations, and manuals are available from a variety of sources. Check the FMCSA website for a current list of suppliers. [www.fmcsa dot gov/safety-security/eta/index.htm](http://www.fmcsa.dot.gov/safety-security/eta/index.htm)
2. A copy of your carrier profile can be obtained at no cost from the FMCSA Portal (<https://portal.fmcsa.dot.gov/login>).
3. Conduct periodic internal reviews of your driver qualification, hours of service control, maintenance, accident analysis/reporting, training, and other safety systems to ensure continued compliance with the FMCSR.
4. Obtain a copy of each driver's driving record and review it annually.
5. Review the circumstances under which a CDL is required. CDL and drug testing rules apply to both interstate and intrastate commerce.
6. FMCSA recently announced planned improvements to the Carrier Safety Measurement System (SMS) which was implemented in December 2010 as part of the Agency's broader Compliance, Safety, Accountability (CSA) initiative. A preview of these improvements is currently available to motor carriers. The system changes are scheduled to be available to the public in July 2012. There will be additional opportunity for public comment on the changes after the preview period ends in July 2012.
The improvements to SMS are based on ongoing analysis and feedback from enforcement personnel, the motor carrier industry, and other stakeholders. The changes more effectively identify and prioritize high-risk and other unsafe motor carriers for enforcement interventions designed to reduce commercial motor vehicle crashes and hazardous materials incidents.
Motor carriers currently have the ability to preview how the improvements impact their individual safety data in SMS. These improvements include: (1) Changes to the SMS methodology that identify higher risk carriers while addressing industry biases; (2) better applications of SMS results for Agency interventions by more accurately identifying safety sensitive carriers (i.e., carriers transporting people and carriers hauling hazardous materials (HM)), so that such firms can be selected for CSA interventions at more stringent levels; and, (3) more specific fact-based displays of SMS results on the SMS Web site.
The data preview may be found at [http://csa.fmcsa dot gov/](http://csa.fmcsa.dot.gov/). During the data preview period, the Agency requests comments on the impacts of the changes.

7. CONTROLLED SUBSTANCES AND ALCOHOL BASIC PROCESS BREAKDOWN: Policies and Procedures

DESCRIPTION OF PROCESS BREAKDOWN- Superior Erosion Control, Inc. failed to implement an alcohol/controlled substance testing program prior to beginning their operation.

BASIC SPECIFIC RECOMMENDED REMEDIES

Implement Safety Improvement Practices: The following are recommended practices related to Policies and Procedures:

- Develop a written company policy incorporating by reference all regulations regarding controlled substances and alcohol use, testing, training, and records retention for all employees.
- Develop a policy requiring drivers to submit copies of all citations for moving violations to carrier management within 24 hours.
- Establish a process to ensure that drivers who are randomly tested can be immediately removed if they are found to be positive and that they do not return to safety-sensitive duties until they have complied with the "return-to-duty" process.
- Establish written policies and procedures that promote, verify, and enforce adherence to all controlled-substance and alcohol rules and regulations. Procedures should be tailored to company operations and should provide specific checks and guidelines for interacting with a consortium, if applicable.
- Establish a process to ensure that test results are properly safeguarded from unauthorized disclosure to prospective employers without specific written consent and from disclosure under any circumstances to insurance companies and other nonqualified parties, in accordance with regulations.
- Develop a policy to ensure that all alcohol testing is conducted immediately before or after the period that





SUPERIOR EROSION CONTROL INC
U.S DOT # 1983722

State #

Review Date

04/19/2017

Part B Requirements and/or Recommendations

employees are performing a safety-sensitive function. Drivers can be tested on their day off only for controlled substances. Once notified of their selection, drivers must proceed immediately to the testing facility. If a driver refuses to go, this should be considered as equivalent to a positive result.

- Consider developing a driver selection protocol that uses valid random-number-generator software on a monthly basis to select, by driver identification number, 5 to 8 percent of drivers for controlled-substance testing and 2 to 5 percent for alcohol testing. This will ensure selection of 50 percent of drivers for controlled-substances testing and 10 percent for alcohol testing per year, given fluctuations in the driver workforce over the course of the year.

- Develop a written and progressive disciplinary policy focused on taking corrective action to ensure drivers comply with regulations and policies. A progressive disciplinary policy could include, among other things, written warnings, suspensions, or work restrictions, monetary penalties, and termination. This policy should also specify consequences for any carrier official who knowingly and willfully allows controlled-substance and alcohol violations.

Seek Out Resources:

- You are encouraged to review your company's record at the following website: <http://a.fmcsa.dot.gov/SMS>. You will need to use your PIN Number that has been provided by the FMCSA.
- Contact industry associations to get resources and ideas on safety improvement practices from other carriers in the industry.

8. DRIVER FITNESS BASIC PROCESS BREAKDOWN: Monitoring and Tracking

DESCRIPTION OF PROCESS BREAKDOWN- Superior Erosion Control, Inc. failed to have annual reviews, certification of violations, and MVR's for each driver annually as required. They failed to have the driver qualification file completed within 30 days of employment on a new driver.

BASIC SPECIFIC RECOMMENDED REMEDIES

Implement Safety Improvement Practices: The following are recommended practices related to Monitoring and Tracking Processes:

- Implement an effective process for monitoring and documenting all drivers' job functions, training, qualifications, renewal dates, disclosed medical conditions, and operational restrictions, including those of drivers on a waiver program or with impairments that may be satisfied by a Skill Performance Evaluation certificate, to ensure that assignments are covered by qualified drivers.
- Review and retain each driver's Motor Vehicle Record (MVR) at least annually to ensure compliance with company policies, Federal regulations, and State and local laws and ordinances related to driver fitness. If a driver seems to have numerous violations, the MVR should be reviewed more often. Random MVR checks in addition to annual checks are also effective. File the MVR in each driver's driver qualification file after review.
- Maintain each driver's investigation history file in a secure location with limited and controlled access for as long as the driver is employed and for three years thereafter.
- Maintain roadside inspection reports, moving violation records, training records, the Commercial Driver's License (CDL), the dispatch schedule, bills of lading, and the medical report to help evaluate the performance of all staff involved in qualifying drivers (dispatchers and managers) and the effectiveness of the policies and procedures.
- Implement a system for keeping accurate records of employee driver fitness training needs, such as entry-level and HAZMAT training, and completed training via software, a checklist in the driver's file, and/or another appropriate method.
- Evaluate personnel who are monitoring driver fitness performance by making sure they are reviewing driver-assignment and qualification files, applying the performance standards fairly, consistently, and equitably, and documenting the evaluations.
- Regularly evaluate the company's driver fitness-related inspection results via the Federal Motor Carrier Safety Administration's (FMCSA) website at <http://a.fmcsa.dot.gov/SMS>. Assess violations for process breakdowns and how to remedy them. Use data to help implement an effective process beyond self-reporting to monitor, document, and evaluate compliance with driver-fitness regulations and company policies.
- When monitoring and tracking any driver-fitness-related issue, always assess whether it is individual or represents a systemic breakdown in one of the Safety Management Processes (Policies and Procedures, Roles and Responsibilities, etc.).

Seek Out Resources:

- You are encouraged to review your company's record at the following website: <http://a.fmcsa.dot.gov/SMS>. You





SUPERIOR EROSION CONTROL INC
U.S. DOT #. 1983722

State #. [REDACTED]

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will need to use your PIN Number that has been provided by the FMCSA

- Contact industry associations to get resources and ideas on safety improvement practices from other carriers in the industry

9. For all Investigations that did not result in a Cooperative Safety Plan.

The KCC requires that you prepare a corrective action letter, addressing the measures taken to correct the violations identified within this report. Submit this letter within 30 days outlining the carrier's updated changes to their policies and procedures regarding all listed violations. Explain in detail how, as a carrier representative, you will rectify these deficiencies and prevent their reoccurrence going forward. Include any supporting documentation and evidence as indicated in the recommendations above, (example: vehicle inspections performed, proof of drug and alcohol testing in place, etc.) necessary to prove that corrective action has been taken. Mail the letter along with copies of your supporting evidence to:

Kansas Corporation Commission
Attn: Gary Davenport
1500 SW Arrowhead Rd
Topeka, KS 66604-4027

10. For all investigations that could result in a Penalty Order

PLEASE NOTE. The violations discovered during this compliance investigation may affect the civil penalty proposed in any subsequent Penalty Order. In addition, your history of prior violations of the Federal Motor Carrier Safety Regulations, Federal Hazardous Material Regulations or the Federal Motor Carrier Commercial Regulations may also affect the civil penalty proposed in any subsequent Penalty Order. Your signature for the receipt of this report acknowledges your understanding that the violations discovered by the KCC during this investigation may be used to calculate any civil penalty proposed as a result of this investigation. Your signature is not an admission for the violations identified.

11. For all Investigations:

- Understand Why Compliance Saves Time and Money. Compliance with FMCSRs will not only save lives but also saves your business time and money. Tracking how much your business spends on non-compliance activities can help you understand the many benefits of compliance to your business and why safety is good business.

- Document and Follow Through on Action Plans: Document and follow through on action plans to ensure the actions you are taking are creating improvement in safety management and compliance.

NOTICE: A pattern and/or repeated violations of the same or related acute or critical regulations (violations of the same Part in Title 49, Code of Federal Regulations) will cause the maximum penalties allowed by law to be assessed under Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). A pattern of violations means two or more violations of acute and/or critical regulations in three or more Parts of Title 49, Code of Federal Regulations discovered during any eligible investigation. Repeated violations means violation(s) of an acute regulation of the same Part of Title 49, Code of Federal Regulations discovered in an investigation after one or more closed enforcement actions within a six year period and/or violation(s) of a critical regulation in the same Part of Title 49, Code of Federal Regulations discovered in an investigation after two or more closed enforcement actions within a six year period.

- NOTICE: 49 CFR Part 391.23 requires prospective employers to, at a minimum, investigate a driver's employment information, crash record, and alcohol and controlled substances history from all employers the driver worked for within the previous 3 years.

The Pre-Employment Screening Program (PSP) is a screening tool that assists motor carriers in investigating crash history and roadside safety performance of prospective drivers. The PSP allows motor carriers to purchase 5 years of crash data and 3 years of roadside inspection data from the Federal Motor Carrier Safety Administration's





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(FMCSA) Motor Carrier Management Information System (MCMIS) Records are available 24 hours a day via Web request. Motor carriers should visit the following website for more information:
<http://www.psp.fmcsa.dot.gov/Pages/default.aspx>

• All motor carriers and truck drivers are needed to fight against terrorism and hijacking. You could be a target. Protect yourself, your trucks, your cargo, and your facilities.

Information on your compliance status, roadside inspections, regulatory changes, accident countermeasures and hazardous material incident prevention manual is available on the Internet at the Federal Motor Carrier Safety Administration's web site at <http://www.fmcsa.dot.gov/> and <http://www.safer.fmcsa.dot.gov/>.

12. This report contains citations of regulations that are deemed serious in nature and could result in penalties against your company and/or your drivers.
13. I acknowledge that these requirements and/or recommendations have been discussed with me and my questions have been answered. I understand that failure to satisfactorily remedy the above-listed requirements and/or failure to comply with the Kansas Motor Carrier Safety Statutes and Regulations could result in suspension of Superior Erosion Control, Inc. operating authority and/or the impoundment of Superior Erosion Control Inc. vehicles.

Jay Unruh, Secretary of Treasurer
Date



ATTACHMENT "B"

DRIVER/VEHICLE EXAMINATION REPORT

Query Central 3.4

Kansas Highway Patrol
MOTOR CARRIER SAFETY ASSISTANCE
700 SW Jackson, Ste 704
Topeka, KS 66603
Phone: (785)296-7189 Fax: (785)296-2858

Report Number: KSHP05200177
Inspection Date: 10/28/2016
Start: 8:15 AM CT End: 08:45 AM CT
Inspection Level: II - Walk-Around
HM Inspection Type: None

SUPERIOR EROSION CONTROL INC

MOUNDRIDGE, KS 67107-8093

USDOT#: 01983722

Phone#: [REDACTED]

MC/MX#:

Fax#: [REDACTED]

State#:

Driver: HOLDEMAN, MARSHALL L

License#: [REDACTED]

State: KS

Date of Birth: [REDACTED]

CoDriver:

License#:

State:

Date of Birth:

Location: WICHITA

Highway: I-235

County:

MilePost: 9

Shipper: CARRIER

Origin: HALSTEAD, KS

Bill of Lading: N/A

Destination: MEDICINE LODGE, KS Cargo: EQUIPMENT

VEHICLE IDENTIFICATION

Unit	Type	Make	Year	State	Plate #	Equipment ID	VIN	GVWR	CVSA #	New CVSA #	OOS#
1	TR	FORD	2015	KS	[REDACTED]		[REDACTED]32767	14,000			
2	ST	PJTR	2015	KS	[REDACTED]		[REDACTED]1220045	25,000			

BRAKE ADJUSTMENTS No Brake Measurements Required For Level 2

VIOLATIONS

Vio Code	Section	Unit	OOS	Citation #	Verify	Crash	Violations Discovered
393.60D	393.60D	1	N		N	N	Glazing permits < 70% of light: DRIVER WINDOW MEASURED AT 16%
392.2	392.2	1	N		N	N	Violation of Local Laws - Explain: FIRE EXTINGUISHER MOUNTED ON OUTSIDE OF TRUCK NOT HOUSED IN WEATHER-TIGHT ENCLOSURE. K.A.R. 82-4-8A(E)
393.104F4/R	393.104F4/R	2	N		N	N	No edge protection for tiedowns
393.100A	393.100A	2	Y		A	N	No or improper load securement: HAY SPEAR IS SECURED WITH (1) 2" SYNTHETIC STRAP...1/2" CUT IN SIDE OF STRAP
393.100A	393.100A	2	Y		A	N	No or improper load securement: SEEDER IS SECURED WITH (2) 2" SYNTHETIC STRAPS...5/8" CUT IN SIDE OF ONE STRAP

HazMat: No HM Transported.

Placard: No

Cargo Tank:

Special Checks: Traffic Enforcement;

* Pursuant to the authority contained in Title 49, CFR; K.S.A. 88-1,129, K.C.C. Reg. 82-4-3, I hereby declare the above marked unit(s) as "OUT OF SERVICE". No person and/or carrier shall permit and/or require the removal of the "OUT OF SERVICE" stickers or the operation of this motor vehicle until ALL out of service defects have been corrected. This Out of Service condition may result in the assessment of a Civil Penalty being issued against the Carrier indicated on this report. Driver Initials _____

* NOTE TO MECHANIC: The undersigned certifies that all mechanical defects listed on this report HAVE BEEN CORRECTED at the time of signature.

Signature Of Repairer X: _____

Facility: _____

Date: _____

// DRIVER: THIS FORM IS REQUIRED TO BE RETURNED TO THE CARRIER BY REGULATION. **//** *CARRIER CERTIFICATION: All defects on this sheet must be corrected or acknowledged PRIOR TO RE-DISPATCH and then certified by a responsible carrier official who must sign below. RETURN THIS FORM WITHIN 15 DAYS to the Motor Carrier Division of the KANSAS HIGHWAY PATROL at the address listed at the top of this form.

Signature Of Motor Carrier X: _____

Title: _____

Date: _____

Report Prepared By:
A.P. MCGUIRE

Badge #:
0520

Copy Received By:
MARSHALL HOLDEMAN

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X _____

X _____

ATTACHMENT "C"

CERTIFICATE OF SERVICE

17-TRAM-521-PEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

first class mail/hand delivered on JUN 06 2017.

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
a.latif@kcc.ks.gov

JAY UNRUH, SECRETARY OF TREASURER
SUPERIOR EROSION CONTROL INC.
PO BOX 397
HESSTON, KS 67062-0397
Fax: 620-345-7210
jay@superiorerosion.com

/S/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date

JUN 07 2017